

REMARKS

The foregoing amendments and these remarks are responsive to the final Office action of August 10, 2006. Favorable reconsideration and allowance of the present application is respectfully requested in view of the foregoing amendments and these remarks. It is respectfully submitted that the foregoing amendments should be entered because they place the present application in condition for allowance and do not raise new issues, and the finality of the Office action should be withdrawn.

Examiner Interview

Applicants thank Examiner Pollicoff for the telephonic interview of September 18 and 19, 2005 with the applicants' undersigned representative. A brief summary of the substance of the interview is provided below.

During the interview, the undersigned and the Examiner discussed the prior art, specifically U.S. Pat. No. 5,485,915 (Harris), and the differences between the bottom panel locking mechanism of Harris and the applicants' invention. Also, the undersigned noted that the importance of the shape of the secondary cut line of the applicants' invention is set forth in the specification at the paragraph beginning at page 6, line 17. This paragraph notes that the secondary cut line of the applicants' invention, having a terminal edge further from the terminal edge of the inner flap than the rest of the cut line, urges each primary male lock to lie flat after insertion through the secondary cut line. The specification is being referred to in an effort to streamline prosecution, and not for the purpose of limiting the claims to the disclosed embodiments.

The Examiner indicated that he would be amenable to considering claims that more clearly distinguish over Harris by a recitation of the function of the secondary cut line. The undersigned submitted proposed claim amendments, including subject matter identical to the amendments presented herein, for preliminary consideration. The Examiner indicated that he would allow the case based on the differences in the proposed claim amendments and the teachings of Harris. In accordance with the Examiner's suggestions, applicants have amended

the claims and presented the following arguments highlighting the differences between the amended claims and Harris.

Claim Rejections

All of the claims are rejected as not being patentable over Harris, in some cases in view of other references. The applicants do not hereby admit to the propriety of the claim rejections in the final Office action and reserve all rights for all claims.

Independent claim 1 of the present application is rejected as being obvious in view of Harris. It is respectfully submitted that claim 1 is neither taught nor suggested by Harris. For example, amended claim 1 recites a wrap-around article carrier having, among other things, an inner flap with a secondary female opening formed by a secondary cut line being shaped for guiding the secondary male lock into a flat position against the inner flap, with the secondary cut line having a center that is significantly further from the terminal edge of the inner flap than the rest of the cut line.

Harris discloses a wrap-around carrier 10 made from a blank 30 with bottom panel flaps 44, 46. The bottom panel flap 44 includes fold line 47 which extends the full length of the flap and which is interrupted by slits 48 forming primary male locking tabs 50. Secondary male locking tabs 52 are connected to the bottom panel flap 44 by the fold lines 47. Cutouts 56 in the bottom panel flap 46 include the primary female locking edges for engaging the primary male locking tabs 50. Slits 58 in the bottom panel flap 46 receive the secondary locking tabs 52. Slits 58 are straight and parallel to the terminal edge of the bottom panel flap 46 so as to facilitate upward folding of the secondary male locking tabs 52 after the locking tabs have been inserted through the slits.

As shown in Figs. 2 and 3 of Harris, the bottom panel 12 includes overlapped portions of the bottom panel flaps 44, 46 which lie flat. However, Harris does not show or suggest that the male locking tabs 50 lie flat after being passing through slits 58. Rather, the specification of Harris does not disclose the position of the locking tabs or suggest in any way that the locking tabs are arranged to lay flat after insertion into the openings.

The applicants respectfully disagree with the indication in the final Office action that the shape of the secondary cut line is an obvious design choice in view of the teachings of Harris. In support of applicants' traversal, it is noted that MPEP 2143 indicates, with emphasis added, that:

[t]o establish a prima facie case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations.

The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, not in applicant's disclosure.

As discussed during the interview, applicants further note that it has been held that rejections based on choice of design are improper. *In re Bezombes*, 164 U.S.P.Q. 387, 391 (CCPA 1970). The Office must show some teaching or suggestion in the prior art that would motivate one skilled in the art to make the alleged choice of design. *Id.* Such motivation is clearly lacking in this case. As such, it is respectfully submitted that the final Office action failed to provide prima facie rejections for claim 1. Accordingly, it is respectfully submitted that the finality should be withdrawn.

As acknowledged in the final Office action and during the aforementioned interview, Harris fails to show a secondary female opening formed by a secondary cut line having a center that is significantly further from the terminal edge of the inner flap than the rest of the cut line. In contrast to the present invention, Harris does not disclose a secondary locking system for causing the locking system (e.g., male locking tabs 50) to lie flat. Rather, it is respectfully submitted that the wrap-around carrier of Harris is known in the art to show a divider locking system wherein the locking tabs 52 are upwardly folded after insertion into the straight slits 58 so that the upwardly folded locking tabs are located between the two rows of containers. The straight slits 58 facilitate the upward folding of the locking tabs 50 after the locking tabs have been inserted past a corresponding slit.

The final Office action cites Fig. 2 and column 4, lines 30-38 of Harris in support of the position that Harris discloses a secondary cut line that allows the locking system to lie flat and therefore it would be an obvious matter of design choice to modify Harris to have a secondary cut line with a center farther from the terminal edge. Applicants submit that no such showing or suggestion of a locking system that lies flat is taught by the cited portions of Harris or any other

teaching of Harris. Fig. 2 of Harris shows an enlarged end view of an assembled carrier that shows the partially overlapped bottom panel flaps forming the bottom panel 12. Contrary to the position noted in the final Office action, Fig. 2, as well as the other views of Harris, lacks a showing of the position of the locking tabs 50 when the bottom panel flaps 44, 46 are locked after insertion of the locking tabs into the slits 58. Also, the cited passage of Harris states that "the thin flexible nature of the paperboard allows the bottles to rest substantially flat against the bottom panel flaps with virtually no interference from the lower gusset panels". As noted during the interview, this passage, and the drawing figures of Harris, are completely void of any showing or suggestion of the position of the locking tabs 50.

In view of the foregoing, it is respectfully submitted that each of the independent claims 1, 6, 11, 16, 22, 28, 31, 35, and 38 is allowable. It is noted that independent claims 16, 22, 28, and 38 further recite that the secondary male lock is substantially flat against the inner flap of the carrier. It is further respectfully submitted that the dependent claims are allowable because of their respective dependence from allowable independent claims 1, 6, 11, 16, 22, 28, 31, 35, and 38, 42, and 43 because the dependent claims further patentably distinguish.

In view of the aforementioned interview and the above remarks, applicants respectfully asserts that the rejections of the claims as set forth in the final Office action are now moot. Applicant further respectfully asserts that all claims are in condition for allowance and requests that an early notice of allowance be issued.

If issues may be resolved through Examiner's Amendment, or clarified in any manner, a call to the undersigned attorney at (404) 879-2453 is respectfully requested.

The Commissioner is hereby authorized to charge any additional fees that may be required for the timely consideration of this Amendment under 37 C.F.R. §§ 1.16 and 1.17, or credit any overpayment, to Deposit Account No. 09-0528.

Respectfully submitted

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Date

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